



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0603; FRL-9968-22-Region 5]

**Air Plan Approval; Minnesota; Prevention of Significant
Deterioration**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Minnesota State Implementation Plan (SIP) submitted on October 4, 2016. EPA is approving the state's Prevention of Significant Deterioration (PSD) rules which incorporate the Federal PSD rules by reference.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0603. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Rachel Rineheart, Environmental Engineer, at (312) 886-7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, Rineheart.rachel@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Comments Received and Response to Comments
- III. What Action is EPA Taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that each SIP include a program to provide for the regulation of

construction and modification of stationary sources, including a permit program as required by part C of subsection I of the CAA - Prevention of Significant Deterioration of Air Quality. On October 4, 2016, the Minnesota Pollution Control Agency (MPCA) submitted a request to revise the Minnesota SIP to include Minn. R. 7007.3000, which incorporates the Federal PSD rules at 40 CFR 52.21 by reference as the State's SIP approved PSD program. Further, by letter dated June 1, 2017, MPCA clarified that it will not implement the provisions at 40 CFR 52.21(g), (s), (t), and (u) because those provisions reference authorities that are retained by the EPA Administrator.

EPA proposed to approve Minnesota's PSD SIP on July 10, 2017. (82 FR 31741, July 10, 2017). EPA received comments on the proposed action from Guardian Energy, LLC, and Granite Falls Energy, LLC. Section II of this document provides a discussion of the comments received and EPA's response.

II. Comments Received and Response to Comments

EPA received comments from Guardian Energy, LLC, and Granite Falls Energy, LLC. The letters from the two commenters are identical. The first comment from both commenters expressed support for the proposed action. The second comment from the two commenters is a request for EPA to clarify how changes in the Federal PSD regulations will be addressed in the Minnesota

SIP approved regulations. Minn. R. 7007.3000 incorporates 40 CFR 52.21 by reference, as amended. Both MPCA and EPA interpret this to mean that any changes to 40 CFR 52.21 will be automatically incorporated into Minn. R. 7007.3000, and will have the same effective date as the Federal rulemaking.

III. What Action is EPA Taking?

EPA is approving the request made by MPCA on October 4, 2016, to revise the Minnesota SIP to include Minn. R. 7007.3000 as the State's SIP approved PSD program.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Minnesota Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully

federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

¹ 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 12, 2017.

Cheryl L. Newton,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In §52.1220, the table in paragraph (c) is amended by adding the entry “7007.3000” in numerical order above the table heading “Offsets” to read as follows:

§52.1220 Identification of plan.

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(c) * * *

EPA--APPROVED MINNESOTA REGULATIONS

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
CHAPTER 7007 AIR EMISSION PERMITS				
* * * * *				
7007.3000	Prevention of Significant Deterioration of Air Quality	11/26/2007	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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3. Section 52.1234 is revised to read as follows:

§52.1234 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met, except for sources seeking permits to locate in Indian country within the State of Minnesota.

(b) Regulations for the prevention of the significant deterioration of air quality. The provisions of §52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Minnesota for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

[FR Doc. 2017-20443 Filed: 9/25/2017 8:45 am; Publication Date: 9/26/2017]